

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

EDGAR ULLOA LUJAN, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF EDUCATION,  
*et al.*,

Defendants.

No. 3:22-cv-00159-DCG

**JOINT ADVISORY REGARDING PUBLICATION OF FINAL RULE**

The parties submit this joint advisory pursuant to the Court’s Order Staying Case, ECF 42.

This case concerns a Department of Education (the “Department”) regulation implementing the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program, which provides that the Secretary will “review[] each application to determine the qualifications of the applicant” on the basis of several factors, including “[t]he applicant’s proficiency in one or more of the languages (other than English and the applicant’s native language) of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers.” 34 C.F.R. § 662.21(c)(3) (the “Foreign Language Criterion”). Plaintiffs’ complaint seeks to vacate the part of the Foreign Language Criterion that excludes consideration of applicants’ proficiency in their “native language.” ECF No. 25. The Court preliminarily enjoined the Department from applying the Foreign Language Criterion insofar as it prohibited considering an applicant’s native language skills until either the Court reaches the merits of this case, or the Department publishes a final rule amending § 662.21(c)(3). ECF Nos. 37 and 40.

On March 21, 2023, the Department published a notice of proposed rulemaking (“NPRM”) in the Federal Register, which proposed to amend the Foreign Language Criterion. 88 Fed. Reg. 16,924 (2023).

On April 12, 2023, the Court granted Defendants’ unopposed motion to stay this case until 30 days after the U.S. Department of Education (the “Department”) publishes a final rule amending the regulation that Plaintiffs challenge in this suit, 34 C.F.R. § 662.21(c)(3). ECF 42 (“[A]ll relevant and pending deadlines are [] extended until the stay automatically lifts 30 days following publication of the final rule.”). The Court further ordered the parties to file a joint advisory within seven days after the U.S. Department of Education publishes a final rule, “notifying it of the publication and any other information the parties think the Court should be aware of.” *Id.* In accordance with the Court’s Order, the parties hereby advise as follows:

On December 8, 2023, the Department published its final rule addressing the regulation at issue in the Federal Register, which amends the Foreign Language Criterion. 88 FR 85,502, *available at* <https://www.federalregister.gov/documents/2023/12/08/2023-26991/fulbright-hays-doctoral-dissertation-research-abroad-fellowship-program-and-faculty-research-abroad>. The revised regulation no longer includes the part of the Foreign Language Criterion that excludes consideration of applicants’ proficiency in their “native language,” which is the provision that gave rise to this lawsuit.

The parties are in the process of discussing next steps to resolve this matter, and will propose next steps for resolving this case in January 2024.

Dated: December 15, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify on this 15th day of December, 2023, a true and correct copy of this document was served electronically by the Court's CM/ECF system to all counsel of record.

/s/ Emily B. Nestler  
Emily B. Nestler